

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own Motion as to)	
the propriety of the rates and charges set forth in)	
M.D.T.E. No. 17 filed with the Department on)	D.T.E. 98-57, Phase III
May 5, 2000 to become effective June 4 to June 6, 2000)	
by New England Telephone and Telegraph Company)	
d/b/a Bell Atlantic – Massachusetts)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

In response to the Department’s *Request for Comments on Verizon Letter and Public Notice* (dated March 15, 2002), Covad Communications Company (“Covad”), through undersigned counsel, hereby submits its comments in the above-captioned matter. Specifically, on March 7, 2002, Verizon filed with the Department a letter and public notice announcing the introduction during the third quarter of 2002 of a first office application of its digital subscriber line (“DSL”) access service at the remote terminal over next generation digital loop carrier (“NGDLC”) equipment, also known as Packet at the Remote Terminal Service (“PARTS”) architecture. The Department requested comments on the effect of Verizon’s filing on the issues under review in this proceeding.

The issues under review in this proceeding have been before this Department for almost two years. During this time, Verizon has repeatedly denied that it had any specific plans to deploy PARTS on a retail or wholesale basis. Even after Covad uncovered Verizon documents belying this position, Verizon did not waver.¹ On

¹ Even as recently as last December, Verizon suggested that it had not made the decision whether it was economically viable to deploy PARTS equipment in the first place. See *Initial Brief of Verizon Massachusetts*, D.T.E. 98-57 Phase III, at 3-4 (December 18, 2001) (“The Department should find that if

February 20, 2002, Verizon announced that it would deploy PARTS as a first office application in certain Massachusetts central offices starting in the third quarter of 2002 (as soon as July 1, 2002).² Clearly, it takes a considerable amount of time to develop and engineer a service, including creating the underlying business plan. Indeed, Verizon sought an extra six months in this proceeding just to prepare an illustrative tariff (which does not even include rates).³ Yet, now it appears that Verizon will be capable of deploying a PARTS retail service in as few as 5 months. The Department would be justified in questioning exactly when Verizon began planning this service offering.

In any event, Covad cannot overstate the importance of having ground rules in place immediately to determine its legal rights to access PARTS equipment on an unbundled basis. Specifically, the Department should adopt the following ground rules:

- (1) *Procedures to resolve any outstanding legal issues surrounding CLECs' right to access PARTS on an unbundled basis.* For instance, since the duty to treat packet switching as an unbundled network element under FCC rules depends upon certain factual showings, the Department should require Verizon to place its factual case on the table *before* it or its affiliates deploy retail DSL services based upon PARTS. In that regard, the Department should deem Verizon to have waived any objection to unbundling packet switching if Verizon waits until CLECs would be disadvantaged by having to litigate the availability of packet switching.

Verizon MA determines that it is economically viable to deploy the necessary technology to support packet switching at the RTs, then Verizon MA may come forward with a PARTS-like offering that would enable Verizon MA to own, deploy, install, and maintain the line cards at RTs, as well as provide the rest of the packet switching service.”) (emphasis added).

² In its letter to the Department, Verizon announced the introduction of its PARTS architecture during the second half of 2002. In its public notice, however, Verizon stated that it intends to roll out service in the third quarter of 2002, which begins on July 1, 2002, less than three months away.

³ See *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2000*, DTE 98-57 Phase III (September 29, 2000) (“According to Verizon, since it does not currently deploy line cards in DLC at RTs in Massachusetts, it must design the service offering, prepare a business plan, engineer the service, and develop service and technical descriptions. In addition, Verizon argues that it must assess the potential demand for the service, prepare cost studies and establish appropriate prices. These factors, Verizon alleges, warrant an extension of at least six months.”)

- (2) *Procedures that would allow CLECs to participate in Verizon's planning process to deploy PARTS equipment.* CLECs cannot simply start offering DSL service over fiber-fed loops the same day that Verizon announces that the equipment is available. Rather, CLECs must have an opportunity to understand what equipment is being deployed in which locations and to influence how it will be configured.
- (3) *Procedures to ensure that there are methods for CLECs to order packet switching from Verizon.* As the Department knows, having the right to access a network element is useless without procedures to order it in commercially-viable quantities. Toward that end, agreed-upon business rules are integral to developing robust ordering procedures.

Similarly, to the extent that there are operational issues to be resolved between the parties, they should begin that process immediately. Contrary to its position prior to this filing, it is clear that Verizon does have the ability to carry on such negotiations now (with its first office application of PARTS as little as three months away). However, Verizon has made it as difficult as possible for Covad to gain access to the proposed service by strategically planning its first office application at a central office where Covad is *not* collocated. In order to gain minimal access to the service, Covad would have to incur excessive cost and delay. Verizon's first office application is not a wholesale trial and without a ruling from the Department in this proceeding, Verizon will have no incentive to work with Covad to provide advanced DSL on a level playing field. The Department should also give teeth to its ruling that Verizon cannot deploy PARTS equipment to service retail customers until CLECs have a valid, effective tariff under which they could access PARTS and offer competing retail services.⁴

⁴ See *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000*, DTE 98-57 Phase III, at 88-89 (September 29, 2000) (“[S]ince, by their very nature, tariff proceedings are time consuming, we find that it would be fundamentally unfair to CLECs, and to consumers, to allow Verizon’s data affiliate . . . to deploy the technology that would allow plug and play, or to deploy the “infrastructure to support wholesale packet transport services from [Verizon’s] RTs,” and only then file with the Department a proposed tariff offering for CLECs to do the same.”) (emphasis added) (internal citations and footnotes omitted).

Covad further disagrees with Verizon's position that it is sufficient to provide interconnecting carriers ninety (90) days notice before offering retail services based upon a PARTS architecture at any particular remote terminal. Ninety days is clearly not enough time to resolve operational issues and for CLECs to offer retail services simultaneously based upon the PARTS architecture.

WHEREFORE, based upon the foregoing, Covad hereby requests that the Department stay Verizon's offering of retail services based upon a PARTS architecture until it has ruled in this proceeding and established ground rules to allow competitors to compete on equal footing, thereby enhancing consumer choice in the DSL market.

Respectfully submitted,

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